



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1866**

December 19, 2013

BY EMAIL

Carol Dinkins, Esq.
Vinson & Elkins
First City Tower
1001 Fannin St., Suite 2500
Houston, TX 77002

Re: Diamond Alkali, Lower Passaic River Study Area – River Mile 10.9
Unilateral Administrative Order for Removal Response Activities
USEPA Region 2 CERCLA Docket No. 02-2012-2020

Dear Ms. Dinkins:

This will respond to your letter dated December 16, 2013 on behalf of Occidental Chemical Corporation ("Occidental"), Maxus Energy Corporation ("Maxus") and Tierra Solutions, Inc. ("Tierra"). Your letter proposes that Occidental, through Tierra, participate and cooperate in the RM 10.9 Time Critical Removal Action ("TCRA") by funding activities required as part of the TCRA. While the proposal to fund work is interesting, several issues must be addressed, including the method and amount of financial assurance.

The difficulty that Occidental has encountered in working with the Cooperating Parties Group ("CPG"), and the perceived lack of willingness to cooperate with Occidental, leads to your proposal to deposit funds in an EPA Special Account, to be used to pay for work. The amount proposed is \$5 million less the amount that Occidental has expended on preserving the UPF as a processing location in the summer of 2012. You estimate the amount deposited will be \$3.6 million.

First, because there is no administrative agreement between Occidental (or Tierra) and EPA, Tierra cannot provide funds to the CPG by placing them in an EPA Special Account from which they would be disbursed. As we have discussed, EPA thinks that a trust account is the appropriate mechanism to accomplish the goal of funding part of the TCRA. As a result of our telephone conference on December 18, 2013, we understand that you are working on a draft trust agreement for EPA's review. The agreement should be similar to the trust agreement used to fund work on the 17-mile remedial investigation/feasibility study, modified as appropriate.

Second, for EPA to determine the appropriate amount in which to fund the trust account, we need a better understanding of the conditions at RM 10.9 that will be addressed with the funds provided. Occidental can give us that understanding by taking the first steps required in EPA's letter dated October 22, 2013: 1) determine the depths and the lateral position of the water mains; and 2) analyze how to safely remove sediment from within the 30-foot offset area, sufficient to cap or otherwise address this area. No special expertise possessed by the CPG will be lost by Occidental's performance of this work.

Occidental's next step should be to prepare a statement of work for performing a study to investigate the location of the water mains and analyze how to address this area. At the same time, Occidental, through Tierra, can establish a trust account and make the first payment, as Occidental has proposed. This can provide the initial funding for the study.

We look forward to receipt of the draft trust agreement.

Sincerely,

A handwritten signature in black ink, reading "Sarah P. Flanagan". The signature is written in a cursive, flowing style.

Sarah P. Flanagan
Assistant Regional Counsel

cc: R. Basso, ERRD
S. Vaughn, ERRD
P. Hick, ORC